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**From:** Wehling, Carrie [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E3E55F11FDC7489698BE69849B301DA6-CWEHLING]  
**Sent:** 8/25/2020 12:50:58 PM  
**To:** Nalven, Heidi [Nalven.Heidi@epa.gov]; Brown, Leah [Brown.Leah@epa.gov]; cara steiner-riley [steiner-riley.cara@epa.gov]  
**CC:** Hough, Palmer [Hough.Palmer@epa.gov]  
**Subject:** Leopold statement on Pebble?

Not sure about the letter but it does look like Matt issued some kind of statement yesterday, based on the end of the Inside EPA article below.

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## Corps Mitigation Request Spurs Competing Claims On Pebble Mine's Future

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Opponents of the planned Pebble Mine in Alaska are calling the Army Corps of Engineers' request for a wetlands compensatory mitigation plan for the project a significant move that critics hope will finally stop the controversial mine, but the mine's developer is downplaying the request as a normal part of the Clean Water Act (CWA) permitting process.

And while some environmentalists are using the Corps' letter to renew their calls for EPA to use its CWA authority to "veto" a Corps wetlands permit for the mine, the agency is reiterating the Trump administration's position of allowing the permitting process to play out rather than issuing a preemptive veto as the Obama EPA proposed.

The Corps' Alaska District, in a letter dated Aug. 20 and publicly released Aug. 24, says it has determined that discharges from the planned gold and copper mine site near Bristol Bay will "cause unavoidable adverse impacts to aquatic resources and, preliminarily, that those adverse impacts would result in significant degradation to those aquatic resources."

Therefore, the Corps says, in-kind compensatory mitigation within the Koktuli River Watershed will be required to compensate for all direct and indirect impacts, which total 2,825 acres of wetlands, 132.5 acres of open waters, and 129.5 miles of streams.

Additionally, direct and indirect impacts associated with the transportation corridor and port site for the mine total 460 acres of wetlands, 231.7 acres of open waters, and 55.5 miles of streams, the Corps says.

According to the wetlands mitigation rule EPA and the Corps promulgated in 2008, "in-kind" means a resource of a similar structural and functional type to the impacted resource and "compensatory mitigation" means the restoration, establishment, enhancement and/or in certain circumstances, the preservation of wetlands, streams and other aquatic resources.

The rule allows the use of mitigation banks, in-lieu fee programs and permittee-responsible mitigation, with a preference in that order, to meet the mitigation requirements.

The Corps in its letter tells the Pebble Partnership that its mitigation plan, due in 90 days, may include a combination of means and mechanisms but to comply with the rule, the plan must "be found sufficient to offset the unavoidable adverse impacts to the aquatic resources identified above."

Environmental and conservation groups cheered the Corps' mitigation plan request for putting the brakes on the project, with Collin O'Mara, president and CEO of the National Wildlife Federation, saying in an Aug. 24 statement that the Corps' letter "will help ensure we don't rush headlong into catastrophe."

"Real mitigation is death for Pebble Mine, because it's impossible to mitigate the damage this project would inflict on Bristol Bay, Tribes and the people whose livelihoods and well-being depend on" the bay, which is a major salmon fishery, Joel Reynolds, senior attorney with the Nature Program at the Natural Resources Defense Council (NRDC), said in an Aug. 24 statement.

Reynolds told *Inside EPA* that because the watershed is "a pristine area of undisturbed" wetlands and "is a perfectly functioning ecosystem," there is no way the mine developers can comply with the Corps' request to offset the massive harm the mine will cause and do so within the watershed.

The "fundamental problem" with calling for mitigation within a pristine watershed is that "there is absolutely no need for mitigation" in areas that would not be affected by the mine, Reynolds said.

Trout Unlimited President and CEO Chris Wood called the Corps' finding "a great demonstration of democracy in action and a victory for common sense."

"The Pebble Partnership put forward a half-baked plan with a litany of problems . . . [that] fails to meet the standards required. Kudos to all the decision makers involved for calling Pebble out on that," added Nelli Williams, Alaska director of Trout Unlimited.

### **'A Normal Letter'**

But Pebble Partnership CEO Tom Collier pushed back on the groups' interpretation of the letter, saying in an Aug. 24 statement that the Corps' letter is "a normal letter in the permitting process" and that the company is well into an effort to present a mitigation plan to the Corps that complies with the requirements of the letter.

"Anyone suggesting a different opinion -- i.e. that Pebble will not be able to comply with the letter or that such compliance will significantly delay issuing a [record of decision (ROD)] -- must be ignorant of the EXTENSIVE preparation we have undertaken in order to meet the requirements of the letter," he said.

While some news reports have linked the Corps' letter to recent tweets and statements by people close to President Donald Trump calling on the president block the mine, Collier said, "A clear reading of the letter shows it is entirely unrelated to recent tweets about Pebble and one-sided news shows."

Trump's oldest son, Donald Trump Jr., and a former top aide to Vice President Mike Pence, Nick Ayers, earlier this month came out against the mine, urging EPA to "block" the project. Fox News commentator Tucker Carlson has also recently argued against the project.

The Corps' letter does not ask for a delay or a pause in the permitting process, and in fact clearly states that the Corps is continuing to work on a ROD for the project, Collier said. "Nothing in the letter is a surprise to us or them."

Collier also emphasized that the letter does not ask for more or additional mitigation. "This is the first time the [Corps] has put its formal assessment regarding mitigation for the Pebble Project on the record. Thus, it is a 'first' request, not a new or additional one and it is in line with what we anticipated."

Collier said that in order to provide in-kind and in-watershed mitigation, Pebble intends to include in its mitigation plan the preservation of enough land so that multiples of the number of impacted wetlands acres are preserved and that it has been working on the details of a plan with the Corps and the state of Alaska since earlier in the summer.

"Based on our understanding of the substance of the letter, our discussions with the state, our substantial work in the field and our discussions with the [Corps] we believe our final Comprehensive Management Plan submission will be submitted within weeks and will satisfy all of the requirements of the letter," Collier said.

### **EPA's Permitting Role**

EPA's role in the permitting process for the planned mine has been controversial, with the Obama EPA proposing a first-time preemptive "veto" of the Corps' permit for the mine and the Trump administration reversing that proposal, a decision that Trout Unlimited is currently litigating.

The Trump EPA has raised some concerns about the project, although EPA Region 10 Administrator Christopher Hladick earlier this year backed away from escalating a dispute with the Corps over the then-ongoing National Environmental Policy Act analysis.

NRDC's Reynolds in his statement urged EPA to "veto Pebble and put a stop to this nightmare once and for all."

But EPA General Counsel Matthew Z. Leopold in an Aug. 24 statement to *Inside EPA* rejected the notion the agency should act now, although he noted the Corps' conclusion about "unavoidable adverse impacts" and that the project as proposed could have substantial environmental impacts and lacks adequate compensatory mitigation.

"EPA has worked with the Corps as a cooperating agency in the Clean Water Act and National Environmental Policy Act (NEPA) processes to develop reasonable, science-based conclusions," Leopold said. "EPA supports the Corps' findings resulting from that process. EPA has been committed to reinstating normal permitting procedures where each project can submit a permit application, be judged on its own merits, and not be short-circuited by EPA preemptive vetoes, like the one proposed in the prior administration. This approach leads to better outcomes for the economy and the environment." -- *Lara Beaven* (lbeaven@iwpnews.com)